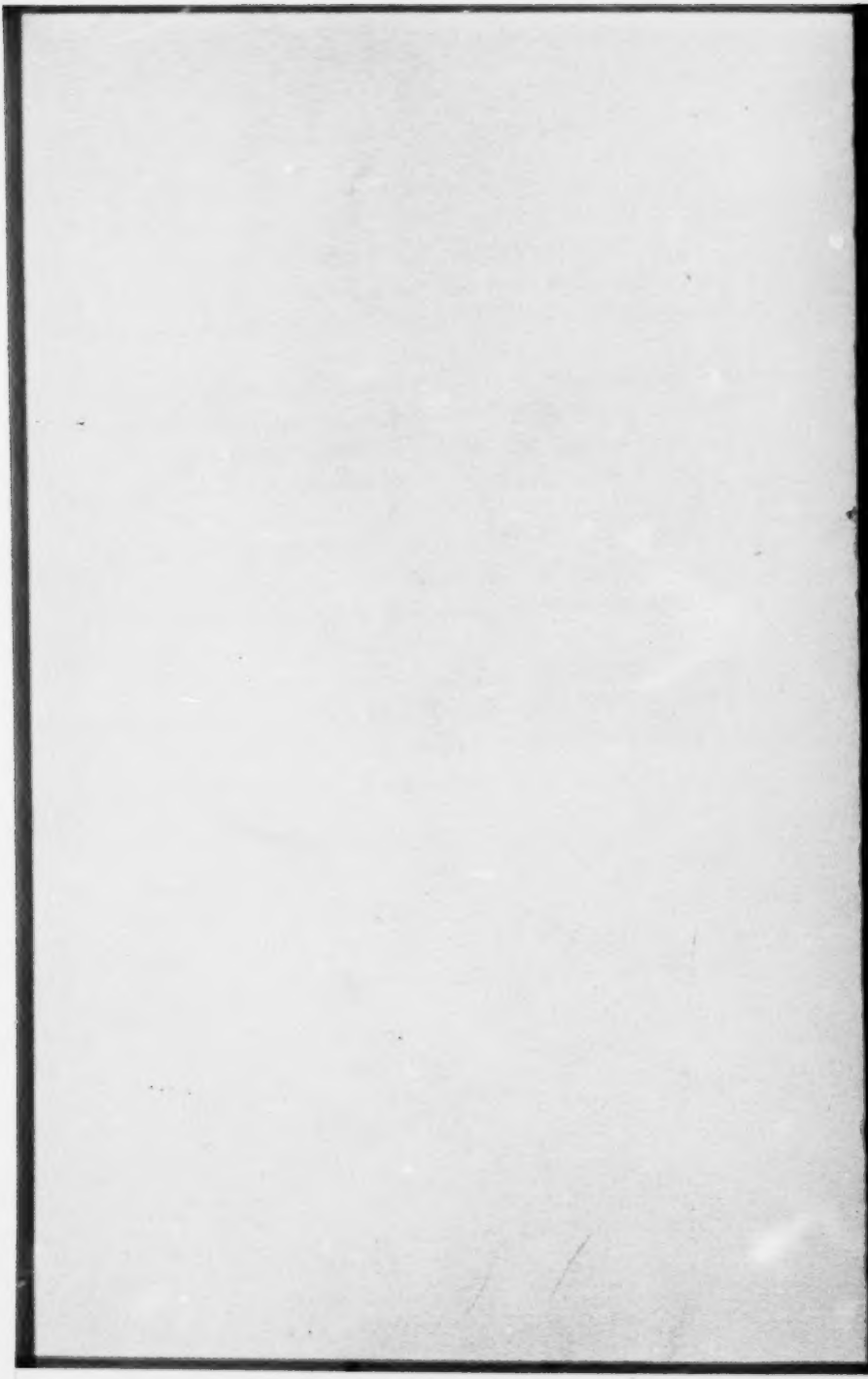

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IN THE

Supreme Court of the United States

October Term, 1921

No. 381

SIOUX CITY BRIDGE COMPANY,
Petitioner,

vs.

DAKOTA COUNTY, NEBRASKA,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEBRASKA

BRIEF OF PETITIONER

STATEMENT OF THE CASE

This case is here on writ of certiorari to the Supreme Court of Nebraska upon the complaint of petitioner that it has been denied equal protection of the law and due process of law in violation of the Constitution and Laws of Nebraska and in violation of the Fourteenth Amendment to the Constitution of the United States on account of the discrimination which has been practiced against it by the taxing authorities of Dakota County, Nebraska.

Petitioner is a corporation organized under the laws of the State of Iowa, and is the owner of a certain railroad bridge located at Sioux City, Iowa, spanning the Missouri River, a portion of said bridge being in the State of Iowa and a portion in Dakota County, Nebraska. The controversy in this case is the valuation of the portion of said bridge in Dakota County, Nebraska, for taxing purposes as well as the question of discrimination which has been practiced against etitioner as compared with other taxpayers in Dakota County.

Section 6364 Revised Statutes of Nebraska, 1913, provides:

> "All persons, companies, or corporations owning, controlling or operating any highway or railroad bridge independent of a railroad system over any stream or river forming the boundary line between this and any other State, shall be required to list the same for taxation, and the same shall be assessed and taxed at its full true value in money as personal property. In arriving at one-fifth of such value, if such bridge is constructed over a navigable stream, the value of the same to the center of the channel of such stream, together with all rights, privileges and franchises connected therewith or belonging thereto, shall be taken into consideration in ascertaining the true value of such bridge property for taxation; and it shall be the duty of such persons or companies or corporations by their president, vice president, managing agent or the superintendent of such bridge, to make out a return to the proper assessor, giving the dimensions of the bridge in the county where it is located, together with a full statement of its rights, privileges and franchises, and the same shall be returned by the assessor."

It had been the practice of the county assessor of Dakota County for many years, prior to 1918, to himself make

out a schedule of the bridge property simply listing the property as the Sioux City Bridge, and himself fixing the valuation of the same for taxing purposes and sending such schedules to some agent of the Bridge Company for signature. That had been the practice for many years as shown by the record.

In the Spring of 1918 the County Assessor of Dakota County made out a schedule in which he described the property of the Sioux City Bridge Company in Dakota County, but in which he placed the lump sum value of its property at $600,000.00. He forwarded such schedule to the taxing officer of the Sioux City Bridge Company for signature. The Sioux City Bridge Company refused to sign the schedule on the ground that the valuation was excessive and returned the same to the County Assessor unsigned; and requested that the valuation be fixed at a less amount. The assessor refused to reduce the valuation and made an entry upon his books that the value of the Sioux City Bridge Company's property for taxing purposes was fixed at $600,000.00.. The Sioux City Brodge Company appealed to the Board of Equalization of Dakota County for relief.

This appeal was merely the appearance by the tax agent of the Petitioner before the County Board of Equalization at their annual meeting and a verbal complaint as to the valuation of the bridge property.

On June 18, 1918, the County Board of Equalization, by its order, increased the valuation of the bridge in Dakota County for taxing purposes to $700,000.00. The order of the Board of Equalization was as follows:

"Dakota City, Nebraska, June 18, 1918.

"The Board of Equalization for assessment of property within and for Dakota County, Nebraska, met in regular session at eleven o'clock A. M. Present: O. W. Fisher, Chairman; A. Ira Davis, John Seller, and George Wilson, County Clerk; J. P. Rockwell, County Assessor, and George W. Leamer, County Attorney.

"At this time the matter of the equalization of the value and assessment of that part of the bridge crossing the Missouri River and owned by the Sioux City Bridge Company which is taxable in Dakota County, came on for hearing.

"Ward Evans, City Attorney for South Sioux City, appeared and asked to have the valuation of the said bridge, which is commonly known as the high bridge, raised. Wm. Mueller appeared on behalf of the Sioux City Bridge Company and asked to have the valuation and the assessment of said bridge lowered.

"Whereupon the Board ordered that the value and assessment of the approach of said bridge be raised from $150,000.00 to $200,000.00 and that the valuation and assessment of the bridge proper be raised from $450,000.00 to $500,000.00 or the total value and assessment of the bridge and approach be raised from $600,000.00 to $700,000.00.

"The said Sioux City Bridge Company by Wm. Mueller duly excepts to said order."

From this Order of the Board of Equalization Petitioner perfected an appeal to the District Court of Dakota County, as provided by *Section 6440, Revised Statutes of Nebraska, 1913,* which provides:

"Appeals may be taken from any action of the County Board of Equalization to the District Court within twenty days after its adjournment, in the same manner as appeals are now taken from the action of the County

Board in the allowance or disallowance of claims against the County. No appeal shall in any manner suspend the collection of any tax, or the duties of officers relating thereto, during the pendency of the same, and all taxes affected thereby, which may be collected, shall be kept by the Treasurer in a special fund without distribution. The Court shall hear the appeal as in equity and without a jury, and determine anew all questions raised before the Board which relate to the liability of the property to assessment, or the amount thereof, and any decision rendered therein shall be certified by the Clerk of the Court to the County Clerk, who shall correct the assessment books in his office accordingly. If the tax books have been delivered to the Treasurer of the County for the collection of such tax before the determination of such appeal in the District Court, a copy of such decision shall be certified to the Treasurer of the County, who shall thereupon distribute or return such tax so held, in accordance with such decision, and the Treasurer shall correct his record to conform to such decision, unless a further appeal be taken to the Supreme Court, in which case the Treasurer shall hold said tax until the final determination of the appeal in that court."

Petitioner in its appeal to the District Court of Dakota County complained upon the following grounds:

"Comes now your Petitioner, Sioux City Bridge Company, a Corporation of the State of Iowa, and for its petition on appeal from the order of the Board of Equalization of Dakota County, Nebraska, fixing the valuation of the bridge and approach of said Sioux City Bridge Company in Dakota County at $700,000.00, and respectfully shows to the Court that said valuation is excessive and should be reduced for the following reasons:

"1. Said property within the jurisdiction of Dakota County is not worth on the market the sum fixed by said Board of Equalization.

"2. Said valuation is not a fair and reasonable valuation.

"3. Said valuation is not the actual money value of said property, but is greatly in excess thereof.

"4. Said valuation is in excess of the original cost of said bridge and disregards the elements of depreciation, said bridge being more than thirty years old.

"5. Said valuation was fixed by the Board of Equalization of Dakota County without evidence and arbitrarily and irrespective of the true facts.

"6. Said valuation if permitted to stand and the Sioux City Bridge Company is compelled to pay taxes thereon, will result in the Sioux City Bridge Company being denied equal protection of the law, and being deprived of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

"7. Said valuation if permitted to stand will violate the Constitution of Nebraska which requires that the taxing burden shall be uniform and said valuation of said property is out of proportion to and greatly in excess of the relative valuation of other property in Dakota County.

WHEREORE, your Petitioner, Sioux City Bridge Company, prays the Court to reduce said valuation fixed by the Board of Equalization of Dakota County to such sum as justice and equity require, which valuation your Petitioner declares, does not exceed $350,000.00."

Issue was joined by Dakota County in the District Court and a trial *de novo* was had and the District Court entered its decree fixing the valuation at $700,000.00.

From that decree Petitioner appealed to the Supreme Court of Nebraska.

Section 1, Article 9 of the Constitution of Nebraska, then in force provided:

> "The legislature shall provide such revenue as may be needful, by levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property and franchises, the value to be ascertained in such manner as the legislature shall direct. * * *"

The evidence before the District Court, and of course before the Supreme Court of Nebraska, showed, without dispute, that whereas the property of your Petitioner had been valued for taxing purposes at 100% or more of its true value, that real estate and other property in Dakota County was universally valued at only 55% of its true value for taxing purposes, and your Petitioner claimed, both in the District Court and in the Supreme Court of Nebraska, that this discrimination against Petitioner by the Board of Equalization of Dakota County and the taxing authorities denied Petitioner equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

The Supreme Court of Nebraska affirmed the decree of the District Court of Dakota County and in its opinion held:

> "Where property is assessed for taxation at its true value, and other property in the district is assessed at 55% of its true value, the remedy, to secure equal taxation, is to have the property assessed below its true value raised, rather than to have the property assessed at its true value reduced. Section 6300 Revised Statutes 1913 contemplates that all property be assessed at its true value."

Section 6300 Revised Statutes Nebraska, 1913, provides:

"All property in this State not expressly exempt therefrom shall be subject to taxation, and shall be valued at its true value which shall be entered opposite each item and shall be assessed at 20% of such actual value. Such assessed value shall be entered in separate column opposite each item, and shall be taken and considered as the taxable value of such property, and the value at which it shall be listed and upon which the levy shall be made. Actual value as used in this chapter shall mean its value in the market in the ordinary course of trade."

The Supreme Court of Nebraska further says in its Opinion:

"It is finally urged that this Court shall reduce the true value of the bridge as found by the Court to 55% of such value, for the reason that other property in the district is assessed at 55% of its true value, and that it would be manifestly unjust to Appellant to assess its property at its true value while other property in the district is assessed at 55% of its true value.

"While undoubtedly the law contemplates that there should be equality in taxation, we are of the view that the plan of equalization proposed by appellant is not the proper remedy. The rule is now settled by a recent decision of this Court that when property is assessed at its true value, the proper remedy is to have the property assessed below its true value raised, rather than to have property assessed at its true value reduced. Lincoln Telephone & Telegraph Co. v. Johnson County, 102 Neb. 254. In the argument of appellant the soundness of this ruling is assailed, and authorities in other jurisdictions are cited which seem at variance with our holding. We are not willing, however, to recede from the rule of that case."

The bridge property consists of the railroad bridge across the Missouri River. This bridge is about 1,800 feet

long. About 74% of it is within the State of Nebraska, and the balance of the bridge proper is in the State of Iowa (Record, p. 77). The total cost of the bridge and its approaches which has been charged to capital account on the books of the Company is $1,022,355.28. Of this amount, calculated upon the 74% of the property in Nebraska, $754,689.76 of the investment is in Dakota County, Nebraska, while the balance is in Iowa (Record, p. 78). The approaches to the bridge consist merely of single track railroad of which 1.14 miles is in Dakota County, Nebraska, and the balance of the approach, consisting of 1.74 miles is in the State of Iowa. The bridge and its approaches constitute a unit and are devoted exclusively to ordinary railroad purposes.

The questions presented are therefore two questions of fact:

1. What is the true value of the bridge property in Dakota County, Nebraska, for the year 1918?

2. What is the basis of assessing all other property in the County for taxing purposes?

And the question of law presented is:

Whether Petitioner is entitled under the Fourteenth Amendment to the Federal Constitution to be treated on a basis of equality with other taxpayers as required by the State Constitution and Statutes; or whether Petitioner has no remedy except that suggested by the Supreme Court of Nebraska, to use its best endeavors to have the tax valuations of all other taxpayers in the County raised to the level of Petitioner's valuation.

SPECIFICATIONS OF ERRORS

I.

The District Court of Dakota County, Nebraska, and the Supreme Court of Nebraska erred in holding and deciding that the valuation of $700,000.00, fixed by the Board of Equalization, was the fair valuation of the bridge for taxing purposes for the year 1918, such holding being contrary to the evidence.

II.

The Supreme Court of Nebraska erred in holding and deciding thats "Where property is assessed for taxation at its true value, and other property in the district is assessed at 55% of its true value, the remedy, to secure equal taxation is to have the property assessed below its true value raised, rather than to have the property assessed at its true value reduced," for the reason that such holding denies to petitioner equal protection of the law guaranteed by the Fourteenth Amedment to the Federal Constitution, the remedy referred to being a political and not a private remedy.

BRIEF OF ARGUMENT

I.

The Sioux City Bridge Company has the right, not only to have its property valued at no more than its actual market value, but it has the right to be taxed upon no greater proportion of that market value than other taxpayers within the jurisdiction of the taxing authority are required to pay upon their property, and a denial by the taxing authority of such equality of treatment denies to your petitioner equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States and violates the Constitution of Nebraska.

Section 1, Article 9, Constitution of Nebraska, provides:

"The legislature shall provide such revenue as may be needed by levying a tax by valuation so that every

person and corporation shall pay a tax in proportion to the value of his, her or its property and franchises, the value to be ascertained in such manner as the legislature shall direct * * *"

Section 6300, Revised Statutes Nebraska, 1913, provides:

"All property in this state not expressly exempt therefrom shall be subject to taxation, and shall be valued at its actual value, which shall be entered opposite each item and shall be assessed at 20% of such actual value. Such assessed value shall be entered in separate column opposite each item, and shall be taken and considered as the taxable value of such property, and the value at which it shall be listed and upon which the levy shall be made. Actual value as used in this chapter shall mean its value in the market in the ordinary course of trade."

Greene vs. Louisville & Interurban R. R. Co., 244 U. S. 499.
Louisville & Nashville R. R. Co. vs. Greene, 244 U. S. 522.
Illinois Central R. R. Co. vs. Greene, 244 U. S. 555.
United States vs. Board of County Commissioners of Osage County, Okla., 251 U. S. 128.
Union Pacific Railroad Co. vs. Weld Co., 247 U. S. 282.
Iowa Central R. R. Co. vs. Board of Review, 157 N. W. 731.
Cummings vs. National Bank, 101 U. S. 153.
L. & N. Ry. vs. Bosworth, 209 Fed. 300.
Washington Waterpower Co. vs. Kootenai County, 270 Fed. 369.
Raymond vs. Chicago Traction Co., 207 U. S. 20.
Atchison, Topeka & Santa Fe. Ry. Co. vs. Sullivan, 173 Fed. 456.
People vs. C., B. & Q. Ry. Co., 133 N. E. 325 (Ill.)

II.

The Sioux City Bridge Company property in Dakota County is not worth $700,000.00 for taxing purposes.

See testimony of H. Rettinghouse (Rec., pp. 52 to 61).
See testimony of F. T. Darrow (Rec., pp. 62 to 74).

III.

The Board of Equalization of Dakota County increased the value of petitioner's property from $600,000.00 to $700,000.00 without any evidence whatever.

See testimony of J. P. Rockwell (Rec., pp. 13 to 22).

IV.

It is undisputed that real estate and other property in Dakota County and the vicinity of petitioner's bridge is assessed at only about 55% of its true value.

See testimony of Thomas A. Polleys (Rec., pp. 79 to 101).

See opinion of Supreme Court of Nebraska containing findings of fact from the evidence (Rec., pp. 126 to 129).

ARGUMENT

I.

The Sioux City Bridge Company has the right, not only to have its property valued at no more than its actual market value, but it has the right to be taxed upon no greater proportion of that market value than other taxpayers within the jurisdiction of the taxing authority are required to pay upon their property, and a denial by the taxing authority of such equality of treatment denies to your petitioner equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States and violates the Constitution of Nebraska.

Petitioner does not complain that any statute or constitutional provision of Nebraska violates the Federal Con-

stitution, but contends that Petitioner has been denied the protection of the Nebraska laws.

Mr. Chief Justice Taft recently said in *Truax vs. Corrigan*, 42 Sup. Ct. Rep. 124, at page 129:

> "Our whole system of law is predicated on the general fundamental principle of equality of application of the law. 'All men are equal before the law, this is a government of law and not of men, no man is above the law,' are all mixims showing the spirit in which legislatures, executives and courts are expected to make, execute and apply laws."

The Constitution and Statutes of Nebraska plainly demand equality in the treatment of tax payers. We may be pardoned for repeating those provisions for they constitute the basis of our complaint against the taxing authorities and the decision of the Supreme Court of Nebraska.

Section 1, Article 9, Constitution of Nebraska, says:

> "The legislature shall provide such revenue as may be needed by levying a tax by valuation *so that every person and corporation shall pay a tax in proportion to the value of his, her or its property and franchises*, the value to be ascertained in such manner as the legislature shall direct * * *"

The legislature provided the manner of taxation by *Section 6300, Revised Statutes, 1913*, as follows:

> "All property in this State not expressly exempt therefrom shall be subject to taxation, and *shall be valued at its actual value*, which shall be entered opposite each item and shall be assessed at 20% of such actual value. Such assessed value shall be entered in separate column opposite each item, and shall be taken and considered as the taxable value of such property,

and the value at which it shall be listed and upon which the levy shall be made. *Actual value as used in this chapter shall mean its value in the market in the ordinary course of trade.*"

The opinion of the Supreme Court of Nebraska in this case recognizes that petitioner has been assessed at least 100% of the value of its property in Dakota County, while other taxpayers are assessed uniformly at only 55% of the true value of their property, and that such discrimination violates the provisions of the State Constitution and Statutes. The facts shown by the record will be discussed more in detail hereafter, but they are summarized in the Opinion of the Supreme Court of Nebraska at pages 127 and 128 of the record. The fact that Petitioner was discriminated against, when compared with other taxpayers, is conceded by the Supreme Court. They say, syllabus 3:

"Where property is assessed for taxation at its true value, and other property in the district is assessed at 55% of its true value, the remedy, to secure equal taxation is to have the property assessed below its true value raised, rather than to have the property assessed at its true value reduced. Section 6300, Revised Statutes, 1913, contemplates that all property be assessed at its true value."

It would only seem necessary, therefore, to apply the well established rules of law to such a situation.

In *Greene vs. Louisville & Interurban R. R. Co.*, 244 U. S. 501, the Court says in the syllabus:

"The principal, if not the sole reason for adopting 'fair cash value' as a standard for valuation, is as a convenient means of securing equal taxation, and, since, when the standard is systematically departed from in respect of certain classes of property, its observance

in respect of others (the tax rate being uniform) would serve to frustrate its very object, it follows that, in such cases, the duty to assess at full value is not supreme, but yields to the duty to avoid discrimination.

"Uniformity in taxing implies equality in the burden of taxation; and this equality cannot exist without uniformity in the basis of assessment, as well as in the rate of taxation.

"A decision of the state supreme court in holding that such discrimination is not subject to correction in the courts of the state, and that the equality and uniformity provisions of the state constitution may be enforced only by selection of proper assessing officers, is not binding upon the federal courts.

"Discrimination resulting from an assessment of the intangible property of a railroad corporation by the board of valuation and assessment at 75% of its actual value while the property of individuals and other classes of corporations, taxed at the same rate, is generally and systematically assessed by other and independent taxing authorities of the state at not more than 60% of actual value, is violative of the provisions of the Kentucky Constitution requiring uniform taxation in proportion to value and an identical rate as between corporate and individual property; and this has been recognized by the supreme court of the state." The Court further says at 512 of the Opinion:

"It hardly is open to serious dispute that if the legislature had confided to a single body the determination of the basis of assessment of the real estate and personal property of individuals, and non-franchised corporations, on the one hand, and of the tangible and intangible property of public service corporations, on the other, the valuation of property of the latter class on the basis of 75% of its actual value, while property of the former class was assessed systematically at 52%, or not more than 60%, of its actual value, would be inconsistent with the sections we have quoted from the Kentucky Constitution.

It will be observed that the question presented in the case at bar is identical with the question involved in the Green case, supra, with this difference: In the Greene case the discrimination resulted from the action of several assessing bodies, while in the case at bar the discrimination is the result of the action of a single taxing authority and is therefore the more reprehensible.

This Court further said in the Greene case, page 519:

> "The next question in order is whether the assessments have the effect of denying to plaintiff the equal protection of the laws, within the meaning of the Fourteenth Amendment. It is obvious, however, in view of the result reached upon the questions of state law, just discussed, that the disposition of the cases would not be affected by whatever result we might reach upon the federal question; for no other or greater relief is sought under the equal protection clause than plaintiffs are entitled to under the provisions of the Constitution and laws of the State to which we have referred. Therefore, we find it unnecessary to express any opinion upon the question raised under the Fourteenth Amendment."

The doctrine of the Greene case is expressly approved by this Court in *Evans vs. National Bank of Savannah,* 251 U. S. 108, where the Court says at pages 118, 119:

> "The legal problem is precisely analogous to that involved in comparing respective burdens of taxation imposed upon different properties or classes of property; concerning which this court has more than once held that a law requiring that one class shall be taxed at the 'same rate of taxation' paid by another requires that not only the percentage of the rate, but the basis of the valuation, shall be the same. Cummings vs. National Bank, 101 U. S. 13, 158, 162, 163; Greene vs. Louisville & Interurban R. R. Co., 244 U. S. 499, 515."

And in the case of *United States vs. Osage County*, 251 U. S. 128, the Court had under consideration discrimination in valuation for assessment purposes of lands belonging to the Indians. Answering the contention that the federal courts of equity had no jurisdiction to determine the matter because there was an adequate remedy under the state laws by way of appealing to the board of equalization for equitable treatment, the Court justifies the interposition of the court of equity for various reasons, among others, pages 133, 134:

> "In the second place because, as the wrong relied upon was not a mere mistake or error committed in the enforcement of the state tax laws, but a systematic and intentional disregard of such laws by the state officers for the purpose of destroying the rights of the whole class of non-competent Indians who were subject to the protection of the United States, it follows that such class wrong and disregard of the State Statute gave rise to the right to invoke the interposition of a court of equity in order that an adequate remedy might be afforded."

In *Iowa Central Railway Co. vs. Board of Review*, 157 N. W. 731, the Supreme Court of Iowa says:

> "The paramount object of the law in distributing the burden of taxation is equality, and though property of a taxpayer is assessed at less than its true value, yet if it is assessed higher in proportion than other property, he has a just cause of complaint."

The case of *People vs. C., B. & Q. R. R. Co.*, 133 N. E. 325 (Illinois) presents a situation very similar to the case at bar. The Court says (Syllabus one):

> "When assessing authorities, in disregard of the Constitution and the law, have assessed property far below

its real cash value, they must follow the principle of uniformity and assess all persons and corporations at the same proportionate value."

And in the Opinion, at page 327, the Court says:

"It has been held by this court that taxing authorities have no justification in withdrawing any property from the protection of the constitutional principle of uniformity of taxation, as uniformity of taxation is required under the Constitution, and that a person cannot be compelled to pay a greater proportion of taxes, according to the value of his property, than another property owner. Board of Supervisors vs. Chicago, Burlington & Quincy Railroad Co., 44 Ill. 229; Chicago & Northwestern Railway Co. vs. Board of Supervisors, 44 Ill. 240. Where the assessing authorities have disregarded this provision of the Constitution and the law and have assessed property far below its real cash value, generally speaking, they must also follow the principle of uniformity, and 'their assessment of all persons and corporations * * * must be at the same proportionate value."

The responsibility for the discrimination which has been practiced against Petitioner rests, we think, as much with the Supreme Court and District Court of Nebraska as with the Board of Equalization. The Supreme Court in its opinion in Syllabus 2 (Record, p. 127), says:

"The findings of a board of equalization must be so manifestly wrong that reasonable minds could not differ thereon before this Court will disturb them."

But it is only necessary to read *Section 6440, Revised Statutes of Nebraska, 1913*, providing for appeals from the orders of the Board of Equalization to discover where the true responsibility rests. Among other things the Statute says:

"The court shall hear the appeal as in equity and without a jury, *and determine anew* all questions raised before the board which relate to the liability of the property to assessment, or the amount thereof * * *"

Thus the duty rested upon the District Court of Dakota County to determine as an original proposition, not only the valuation of Petitioner's property for assessment purposes, but the equalization of that value when compared to the assessment of others. The District Court of Dakota County was required by the Statute to hear the case as a court of equity and upon the merits. It was neither necessary nor proper to indulge any presumption in favor of the action of the Board of Equalization. Upon appeal of the case to the Supreme Court of Nebraska the action of the Supreme Court was governed by *Section 8198, Revised Statutes of Nebraska, 1913*, which says:

"In all appeals from the District Court to the Supreme Court in suits in equity, wherein review of some or all of the findings of fact of the District Court is asked by the appellant, it shall be the duty of the Supreme Court to retry the issue or issues of fact involved in the finding or findings of fact complained of upon the evidence presented in the bill of exceptions, and *upon trials de novo* of such question or questions of fact, reach an independent conclusion as to what finding or findings are required under the pleadings and all the evidence, without reference to the conclusion reached in the District Court or the fact that there may be some evidence in support thereof."

We cite these provisions of the Statute to show that the Supreme Court was wrong in attaching any importance to the finding of the Board of Equalization as to the value of Petitioner's property. Upon appeal to the Courts it rested upon the Courts of Nebraska as Courts of Equity to hear the evidence and make findings of fact in accordance

therewith irrespective of what conclusion may have been reached by the Board of Equalization of Dakota County. In the light of this duty resting upon the Supreme Court of Nebraska let us examine further into the facts shown by the record.

In appealing to the Board of Equalization of Dakota County and appealing thence to the District Court of Dakota County, and thence to the Supreme Court of Nebraska, Petitioner pursued the only remedy which the laws of Nebraska afford. The Supreme Court says in its opinion that Petitioner's remedy was to have the valuations of other taxpayers raised rather than to ask to have Petitioner's own valuation reduced. But clearly this is misconception of the Statute.

Section 6140, Revised Statutes Nebraska, 1913, providing for appeals from the Board of Equalization to the District Court is a part of Article 10, Chapter 69, of the same statute. The only possible basis, so far as we can discover, for the Supreme Court's statement of the correct remedy to be pursued in such cases is the language found in *Section 6437, same Statute.* That section embraces five paragraphs, as follows:

> "The county board shall hold a session of not less than three and not more than twenty days, for the purpose contemplated in this section, commencing on the first Tuesday after the second Monday of June each year, and shall:
>
> "First—Fairly and impartially equalize the valuation of the personal property of the county, and to that end shall, on the application of any person who shall deem himself aggrieved, or who shall complain that another is assessed too low, review the assessment and correct the same as shall appear to be just.

"Second—At its meeting in 1912 and every second year thereafter equalize the valuation of real property of the county by raising the valuation of such tracts and lots as are assessed too low, and lowering the valuation of such tracts and lots as are assessed too high; but in cases of evident error of assessment or of apparent gross injustice in overvaluation or undervaluation of real property, the county board of equalization may at its annual meetings consider and correct the same by raising, after due notice has been given to the interested party or parties, or by lowering the assessed valuation of such real property. In cases where farm lands or real property consisting of city, town, or village blocks or lots have been assessed as entities and after time of such assessment part or parts of such entities have been transferred by the owner or owners thereof to another party or to other parties by sale or otherwise, then the county board may at such annual meeting as board of equalization apportion the just and equitable proportion of the assessed valuation of such entities to the various parcels of lands into which such entities have by transfer of title been divided, upon notice given to the parties of such transfer.

"Third—Ascertain whether the valuation of one township, precinct or district bears just relation to all townships, precincts or districts in the county; and may increase or diminish the aggregate valuation of property in any township, precinct or district, by adding or deducting such sum upon the hundred as may be necessary to produce a just relation between all the valuations of the property in the county. It may consider lands, village or city lots and personal property and different classes of personal property, except property assessed or valued by the state board of equalization and assessment, separately, and determine a separate rate per cent of addition or reduction for each of the classes of property as may be necessary to adjust the equalization thereof.

"Fourth—Adjust assessments for the county by raising or lowering the assessment of any person as to any

or all items of his assessment in such manner as to secure the listing of property at its actual value and the assessment of property at its taxable value; but in no case shall the assessment of any person be raised by the board until such person or his agent shall be previously notified, if such person or his agent be found in the county.

"Fifth—Also add to the assessment rolls any taxable property not included therein, assessing the same in the name of the owners thereof as the assessor should have done, but no personal property shall be so added unless the owner thereof is previously notified, if he be found in the county."

Paragraph first, says, as to the duties of the Board of Equalization, that they shall

"Fairly and impartially equalize the valuation of the *personal property of the county* and to that end shall, on the application of any person *who shall deem himself aggrieved* OR who shall complain that another is assessed too low, review the assessment and correct the same as shall appear to be just."

That paragraph relates entirely to personal property.

The Petitioner's property is declared, by *Section 6364 same Statutes,* to be personal property and to be assessed as such. Therefore Petitioner came within the definition of those who should be heard as to personal property assessment

"on the application of any person who shall deem himself aggrieved."

Petitioner deemed itself aggrieved because the assessed value of its property was more than the true value and also because the assessed value and the true value were both out

of proportion to the assessed value of real estate and other property. If Petitioner had not come within the definition of the class of persons "who shall deem himself aggrieved" then the alternative provision of the section therefore applied and would have given Petitioner, as merely a complainant, the right to complain under the language *"OR who shall complain that another is assessed too low."* So that in complaining to the Board of Equalization that it was aggrieved at the valuation placed upon its property, Petitioner placed itself in proper position to have whatever remedy the law and facts warrant. The tribunal it was appealing to was a Board of Equalization. Who, under the Statute, had the right to appear before that tribunal? Those who feel themselves aggrieved, or those who feel that others were assessed too low. Petitioner answered to the first description and possibly also to the second, but in either capacity Petitioner was entitled to be equalized according to the Constitution and Statutes.

What Petitioner was asking for was equalization. That is all it could receive in the way of a remedy at the hands of a Board of Equalization. It would seem to be immaterial whether Petitioner presented itself before the Board as one having a grievance, or one claiming others were assessed too low, or as John Smith, or Henry Brown, or by some other name or title. The only thing provided for as constituting the function of the Board of Equalization was to equalize assessments.

From its order in that respect an appeal was provided to the District Court where all questions were to be considered anew and the matter was to be tried by the Court sitting as a court of equity. From that Court, under general statutes, an appeal is provided to the Supreme Court, who in turn must try the case *de novo* on the record.

Moreover the second paragraph of *Section 6437 Revised Statutes Nebraska, 1913,* provides that real estate values shall be equalized every two years commencing with the year 1912.

This case was presented at the 1918 annual meeting of the Board of Equalization, which was the proper year under the Statute for it to equalize real estate assessments by raising those which were too low and lowering those which were too high. There is nothing in the second paragraph of Section 6437 which expressly authorizes a taxpayer to make a complaint against the assessment of others on the ground that it is too low. The Statute appears to give that right only with respect to personal property assessments.

As we understand *Section 6437* the first paragraph relates to the equalization of personal property. The second paragraph relates to the equalization of real property. The third paragraph relates to equalization as between subdivisions of the county. The fourth paragraph relates to equalization over the entire county as a whole. The fifth paragraph authorizes the addition to the taxroll of property which had been omitted from assessment.

What Petitioner complains about on the subject of discrimination is that real estate (Dakota County is a farming community) is grossly undervalued, while Petitioner's property, which the Statute calls "personal property," is grossly overvalued.

The remedy afforded by the State law to correct such a discrimination is, we think, a complaint before the Board of Equalization and appeal therefrom to the District Court, thence to the Supreme Court as pointed out. The evil of

the situation is that the courts, an appeal to which is provided by the Statute, have denied judicial relief on a subject which the Statute makes it their duty to remedy, each court acting on its own responsibility and without regard to the action of the Board of Equalization.

Even if Petitioner had desired to attempt some action against the County Board of Equalization or the County Assessor to compel him or them to raise the assessment on other taxpayers in the County up to the level of Petitioner's valuation, there is no way provided by law in Nebraska for accomplishing that end. Mandamus would not afford a remedy because *Section 8272 Revised Statutes Nebraska, 1913,* concerning mandamus says:

> "This writ may not be issued in any case where there is a plain and adequate remedy in the ordinary course of the law. It may issue upon the information of the party beneficially interested."

A plain, adequate remedy at law has ben provided by appeals to and from the County Board of Equalization, thence to the District Court, thence to the Supreme Court. Petitioner's grievance lies not in the lack of proper remedy, but the refusal of all the tribunals which the law has charged with the duty of equalizing Petitioner's assessment to equalize the same. Petitioner is denied judicial relief in violation of the Constitution and Statutes of the State.

II.

The Sioux City Bridge Company property in Dakota County is not worth $700,000.00 for taxing purposes, but only about half that amount.

III.

The Board of Equalization of Dakota County increased the valuation of petitioner's property from $600,000.00 to $700,000.00 without any evidence whatever.

The foregoing statements should be considered together. The testimony of J. P. Rockwell, County Assessor (Record, pp. 13 to 22), shows that neither the County Assessor nor the Board of Equalization had any information as to the value of the bridge. Thus at Record, page 21:

"Q. Now you spoke of viewing the bridge and approaches. You may state whether or not you had any knowledge, or have any now, of the cost of materials, either originally, or at the present time, of the bridge or the approaches?

A. No.

Q. Did you have any knowledge of the cost of the work and labor involved in either structure?

A. No, sir, not of my own knowledge.

Q. And no member of the Board of Equalization had any such information as far as you know?

A. As far as I know.

Q. There was no such information expressed by any one before the Board of Equalization that took this action, was there?

A. Why, I do not know what might have been expressed in some of the talk that came up I am sure.

Q. There was no evidence offered by witnesses?

A. There was never——

Q. As to any of the details of the cost of materials or labor involved in the structure?

A. No."

From Record, page 13:

"Q. You may state who, if any one, appeared as witnesses before that Board of Equalization on the question of the value of that bridge?
A. Well, I do not think that the Board of Equalization had any witnesses. They did arrive at their conclusion from what they knew of the bridge and what they knew of the value of the property.
Q. You did not subpoena any witnesses?
A. We did not subpoena any witnesses to take their evidence."

From Record, page 14:

"Q. There was no witness appeared before the Board on the question of value, was there?
A. No, I do not think there was.
Q. And there was nothing before the Board to show the original cost of either the bridge or the approach, was there, Mr. Rockwell?
A. No, I do not think there was?"

As already observed, this bridge had been valued at $600,000.00 for taxing purposes for a great many years, apparently because no one objected to the valuation. For the year 1918 the County authorities raised the valuation to $700,000.00. On the question of the reason for this increased valuation, the record shows (page 16):

"Q. What, if anything, did the Board have before it with respect to any increase in value of the bridge structure proper as against previous years?
A. They did not have any evidence.
Q. No evidence at all? The increase of $50,000.00 on the bridge was made without any evidence at all?
A. Well——

Q. As far as any evidence went?
A. The only evidence we had was that property generally had increased in value since that assessment was made, some ten years before that, or some time before that, at least, that other property had raised in value—other personal property and real estate had all raised in value, and the bridge had remained still at the same assessment—the same price that it had been assessed at in 1912 I think. I am not sure when the former assessment was made.

Q. You mean the surrounding farming community property had increased in value?
A. Yes, sir.

Q. Was any complaint of any kind filed by any one before the Board of Equalization that the assessment of the Sioux City Bridge Company property had been too low?
A. Nothing only what I said myself, that I thought it was too low under these existing circumstances.

Q. Was any statement—any written statement filed with the Board by any one, including yourself, on the subject of the previous valuation and the proposed raise?
A. I do not think there was.

Q. Have you had any experience as a railroad builder?
A. No, sir.

Q. Nor as a bridge builder?
A. No, sir.

Q. Or as a railroad operator?
A. No, sir.

Q. And are you familiar with the other members of the Board of Equalization?
A. I think so.

Q. Had any of them had any such experience which I inquired of you regarding?
A. I do not think they had."

There was no evidence before the District Court of Dakota County, who, under the Statutes, was obliged to hear the case as a court of equity and determine anew all questions with respect to the valuation of Petitioner's property, which could have justified the District Court in sustaining the raise in valuation from $600,000.00 to $700,000.00. Indeed the evidence as to the value of the property was very much the other way.

On the question o fthe value of the bridge property but two witnesses testified; H. Rettinghouse (Record, pp. 51 to 61), and F. P. Darrow (Record, pp. 62 to 74).

Mr. Rettinghouse testified that he is the Chief Engineer of the Sioux City Bridge Company and has had charge of the bridge property for five years; that the bridge was built thirty years ago at a time when present day traffic was not dreamed of and that the bridge is entirely out of date for modern traffic. That the bridge was designed and is useful only for railroad purposes, and that while the present physical condition of the bridge is very good, the bridge will not carry modern traffic, and it is impossible to use the bridge as ordinary railroad mileage, as it will not sustain modern locomotives. It is necessary to use the bridge in a very restricted way because it is not strong enough for modern traffic; and he testified that assuming that the original cost of the bridge was approximately $950,000.00 (as shown by the record) he estimated the depreciation in value at the present time to be not less than $200,000.00. A reading of the entire testimony of Mr. Rettinghouse will disclose that his estimate was based upon an intimate acquaintance with the bridge and with railroad problems.

Mr. Darrow testified from a wealth of experience with bridges on the Burlington Railroad, of which he is Engineer,

that the bridge is obsolete and will not carry modern traffic and he placed the depreciation at $300,000.00 from the original cost (Record, p. 69).

The Supreme Court in its opinion refers to the testimony of these two witnesses and does not refer to any other testimony on the subject of depreciation because there were no other witnesses on the subject. One conclusion they reached, based upon this testimony, is that the portion of the bridge in Dakota County is worth $528,148.00 and on the other estimate $533,098.00. Notwithstanding this, the valuation of $700,000.00 is permitted to stand. Considering the duty of the Supreme Court to find the facts de novo as required by the Statute, it is difficult to understand by what method of reasoning they arrived at the value of $700,000.00 for petitioner's property.

IV.

It is undisputed that real estate and other property in Dakota County and the vicinity of petitioner's bridge is assessed at only about 55% of its true value.

If it be conceded, for the purpose of argument, that Petitioner's property is shown to be worth $700,000.00, yet under the undisputed evidence, Petitioner was entitled to have the same percentage of actual value applied to its property for assessment purposes as was enjoyed by other taxpayers in the county.

The testimony of Thomas A. Polleys (record, pp. 79 to 101), is undisputed that real estate in Dakota County, which constitutes the overwhelming majority of taxable property, is assessed only about 55% of its true value. That such is the state of the testimony is assumed by the Supreme Court in its opinion, where it says:

"Where property is assessed for taxation at its true value, and other property in the district is assessed at 55% of its true value, the remedy, to secure equal taxation is to have the property assessed below its true value raised, rather than to have the property assessed at its true value reduced."

A similar situation was presented to this Court in *Greene vs. Louisville & Interurban R. R. Co.*, 244 U. S., *supra,* where the court said at pages 512, 513:

"The fact should be emphasized that the Kentucky Court of last resort, far from holding that discrimination such as is here complained of is in accord with the constitution and laws of the state, has recognized distinctly that it is not; but has felt constrained to hold that, under circumstances similar to those of the present cases, there is no redress in the courts of the state; and that the constitutional provisions for equality and uniformity are capable of being put into execution only through the selection of proper officers. Louisville Ry. Co. vs. Commonwealth, 105 Ky. 710, 719. This, while admitting the wrong, merely denies judicial relief, and is not binding upon the federal courts."

In much the same way the Supreme Court of Nebraska admits the injustice which has been practiced against Petitioner, because it says, immediately following the language last above quoted from its opinion:

"Section 6300, Revised Statutes, 1913, contemplates that all property be assessed at its true value."

But the procedure of having re-assessments made against other property in the County so as to bring the valuation to the level of true value, this Court said in the Green case, supra, page 521:

"There is nothing in these provisions to indicate that parties in the situation of the present appellees, who

have no different interest in the undervaluation by the county assessors than that which might be possessed by any other citizens of the state, are entitled to be heard to complain that the county assessments are too low. Nor is any case cited where such a complaint has been entertained. The remedy of re-assessment appears to be a public, not a private remedy."

CONCLUSION

"The equal protection of the law is a pledge of the protection of equal laws."

This was the language of Mr. Justice Matthews in *YickWo vs. Hopkins,* 118 U. S. 356, 369, and quoted with approval by Chief Justice Taft in *Truax vs. Corrigan, supra.* The Constitution and Laws of Nebraska were designed to secure equality of treatment between taxpayers. The mere *existence* of equal laws does not satisfy the constitutional rights of Petitioner to the *equal protection* of the law, as guaranteed by the Fourteenth Amendment to the Federal Constitution. Petitioner must be able to enjoy the *protection* of equal laws. Petitioner has been denied the protection of the Constitution of Nebraska and the Statutes of Nebraska and the highest Court of the State has expressly and knowingly permitted a great discrimination against Petitioner in the matter of taxation. The Supreme Court of the State has recognized in its Opinion that a wrongful discrimination has been practiced against Petitioner, but it denies Petitioner judicial relief. If the equal protection clause of the Fourteenth Amendment to the Federal Constitution "is a pledge of the *protection* of equal laws" it should be construed to compel the taxing authorities of Dakota County, Nebraska, to accord to Petitioner equality of treatment under the State Constitution and Statutes. Fair laws can be of no value to the citizens unless honestly administered by the public authorities.

We believe that the Fourteenth Amendment to the Federal Constitution extends its protection to cases of this kind, and we respectfully ask that the taxing authorities of Dakota County, Nebraska, and the State Courts, whose duty under the Statutes, it is to hear appeals from the taxing board, be compelled to accord to Petitioner the equal protection of the State Constitution and Statutes.

Respectfully submitted,

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